



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of December 18, 2007

Approved January 22, 2008

Members present: Chairman Richard Butler, Co-Chairman Brett Hunter, Members Doug Andrew, Jack Baker, Scott Boisvert and Land Use AA/recording Secretary Meredith Bolduc.

Mr. Butler called the meeting to order at 7:47 p.m. then called the roll.

It was agreed to go directly to the scheduled Public Hearing and address prior minutes and other Board business after the hearing has been closed.

Case # 07-012
Michael and Robert Dudley
MAP 1 LOT 048-007
Sandown and South Roads

Present: Owners Robert and Michael Dudley, representing surveyor Roscoe Blaisdell.

Mr. Butler opened this Public Hearing at 7:50 p.m. and explained that this is a continuation of the November 20, 2007 portion of this Public Hearing, which was continued at the applicants request so that Mr. Blaisdell could be in attendance.

Mr. Hunter explained the purpose of the Board and the procedure for a Special Exception. He read Article IX Section H of the Fremont Zoning Ordinance.

It was noted that this hearing was noticed on October 20, 2007 at the Fremont Post Office and Fremont Town Hall and in the November 2, 2007 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on October 22, 2007 and all returns have been received. The application package included: 6 copies of drawn plan, proper check amount, a current list of abutters, letter of intent, letter from owners, and an October 16, 2007 Code Enforcement letter of denial stating that the applicants proposal would require a Special Exception from Fremont Zoning Ordinance Article IX Section H. It was agreed that the application was complete.

An undated letter of request written by Michael Dudley was received on October 16, 2007. Mr. Dudley stated that the reason for the request for a Special Exception is due to grading issues along the lot area

next to the proposed house and he is seeking a 25' wider building envelope for lawn and grading uses only. This would allow him a 75' wetland setback instead of the required 100' setback.

Mr. Butler stated that referrals have been received from the Planning Board advising that the proposal would be non-compliant with the Fremont Zoning Ordinance Article IX Section H; the Health Officer who offered the same as the Planning Board; the Code Enforcement Officer who found no cause to oppose the request. The Board also received a referral from the Conservation Commission which stated "*Please be advised that at the November 5, 2007 Conservation Commission meeting it was the opinion of the Conservation Commission that the request be denied.*"

Point one: The owner knowingly placed the foundation of the house in its present position.

Point two: The purpose of the Town Ordinance is to provide an effective buffer that will be able to adequately protect the adjacent wetland from an alteration in its natural land. Increasing the runoff toward the wetland with excess nitrates, phosphates and potassium could alter the current functionality of the wetland to provide for wildlife and accelerate its eutrofication.

Comment Sheets were received from the following:

Code Enforcement Officer: *I have reviewed the request for Special Exception under Article IX Section H for the property and find no cause to oppose the request. In this apparent tight fitting of buildable area, it seems appropriate to provide for an adequate and reasonable extension of the buildable are.*

Fire Chief: *No comment ref wetlands, but would like plan showing town roads and proposed driveway for future review.*

Planning Board: *no further comment*

Conservation Commission: The Commission reiterated the same statement made in their letter of referral above.

The Board received a November 7, 2007 correspondence from Richard Bond of the Rockingham County Conservation District. Mr. Bond recommended approval of this Special Exception request and his conclusion was as follows:

The applicant, Michael Dudley, proposes to impact the outer portions of two wetland buffers to grade the area around his house. The house and driveway occupy nearly all of the land in the building envelope on this lot. The portion of the wetlands nearest the house location is barely wet enough to qualify as a wetland.

The Board reviewed the submitted plan #1253-2 which was the subsurface septic design for the parcel drawn and stamped by Roscoe Blaisdell and dated September 21, 2007. The plan showed the locations of the proposed well, proposed septic and of the wetlands. It was noted that on September 5, 2008 there was a Special Exception granted for this parcel to allow the well and associated drainage to be as close as 50' to the wetland and a notice of that decision was submitted. Mr. Blaisdell stated that the building envelope is so tight that some of the fill for the area around the septic and grading around the house would creep to about 80' from the wetland and to maintain 30' of disturbed land around the house they would need to be approximately 75' from the wetland. He stated that the foundation is already in and he submitted the foundation certificate. Mr. Blaisdell stated that he was aware that the foundation needs to be 100' from wetlands, but did not realize that additional land could not be disturbed for purposed of grading and they are going need to strip out trees and stumps to fill around the septic bed. It was noted that the septic cannot be moved because of the contour and elevations of the property in that area and part of the existing slope needs to be leveled.

Mr. Butler stated that, in summary, the applicants are seeking a 25' Special Exception to be allowed to grade on the property as close as 75' to a wetland.

Mr. Butler asked for a consensus of the Board relative to whether the exception request is, or is not, allowed by the ordinance and there are, or are not, specific conditions present under which the exception may be granted. It was the unanimous consensus of the Board that the exception request is allowed by the ordinance and there are specific conditions present under which the exception may be granted.

After careful review of the plan and consideration of all correspondences by the Board, Mr. Hunter made the motion that, based on the information presented and on the Boards determination that the exception is allowed by the ordinance and the specific conditions under which the exception may be granted have been met, the Board grant the following Special Exception from Fremont Zoning Article IX Section H, as requested by Robert and Michael Dudley, to allow grading and leveling of the property located at Map 1 Lot 048-007 closer than one hundred (100') feet to a wetland with the following conditions.

1. That no portion of the grading and leveling, or other altering of the surface configuration of the land, shall be closer than seventy five (75) feet to any wetland.
2. These restrictions shall be recorded with the current deed and with any subsequent deeds to this parcel or subdivision of this parcel.
3. The Special Exception granted herein is for lawn and grading purposed only and for no other use.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

Mr. Butler declared the Special Exception granted. The applicant was instructed that there is a 30 day appeal period and that this decision will be recorded at the Rockingham Registrar of Deeds and will be attached to the deed of the property.

The Dudley's agreed to submit all recording fees.

At 8:20 pm Mr. Baker made the motion to close this Public Hearing.
Motion seconded by Mr. Boisvert with unanimous favorable vote.

MINUTES

Mr. Andrew made the motion to accept the minutes of the November 20, 2007 meeting as written.
Motion seconded by Mr. Baker with unanimous favorable vote except for Mr. Boisvert and Mr. Butler who abstained as they were not present at that meeting.

There was a general conversation relative to the ongoing litigation of the Fremont Children's case, Map 2 Lot 181, that was denied a Variance in April 2007 for lack of allowed frontage. It was noted that the court has not yet handed down a final decision.

CORRESPONDENCE

The Chairman received a December 18, 2007 correspondence from Selectmen's Clerk Jeanne Nygren relative to submission of the annual ZBA report for the Town Report.

Next meeting: scheduled for January 22, 2008.

At 8:50 Mr. Baker made the motion to adjourn.

Motion seconded by Mr. Hunter with unanimous favorable vote.

Respectfully submitted,
Meredith Bolduc, recording secretary
